

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:10cr485
	.	
vs.	.	Alexandria, Virginia
	.	January 23, 2015
JEFFREY ALEXANDER STERLING,	.	10:01 a.m.
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Defendant.	.	
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TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME VIII

APPEARANCES:

FOR THE GOVERNMENT:	JAMES L. TRUMP, AUSA
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	and
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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 P R O C E E D I N G S

2 THE COURT: All right, we need to call our criminal
3 case. Mr. Wood, could you get the lawyers in here for the
4 criminal case?

5 (Defendant present, Jury out.)

6 MR. MAC MAHON: Good morning, Your Honor.

7 MR. TRUMP: Good morning, Judge.

8 THE COURT: All right, good morning.

9 THE CLERK: Criminal Case 10-485, United States of
10 America v. Jeffrey Alexander Sterling. Would counsel please
11 note their appearances for the record.

12 MR. TRUMP: Jim Trump on behalf of the United States.
13 Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. OLSHAN: Eric Olshan on behalf of the United
16 States. Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. FITZPATRICK: Good morning, Your Honor. Dennis
19 Fitzpatrick for the United States.

20 THE COURT: Good morning.

21 MR. POLLACK: Good morning, Your Honor. Barry
22 Pollack on behalf of Mr. Sterling.

23 THE COURT: Good morning.

24 MR. MAC MAHON: Edward MacMahon for Mr. Sterling,
25 Your Honor. Good morning.

1 THE COURT: Good morning.

2 MS. HAESSLY: Mia Haessly on behalf of Mr. Sterling.
3 Good morning.

4 THE COURT: Good morning.

5 All right, very quickly, you've seen the note from
6 the jury. They want to know if they can get copies of the
7 testimony -- transcripts of the testimony of Robert S. and
8 Merlin. Our standard answer is they can't get copies.

9 I think I'd bring the jury in just to say good
10 morning to them anyway and explain to them that they have to
11 consider all the evidence, and so if we just give them the
12 transcript of one witness, that's highlighting that testimony,
13 which is a problem.

14 Anybody have an objection to that instruction?

15 MR. TRUMP: Your Honor -- no, Your Honor.

16 MR. MAC MAHON: Your Honor, only if your instruction,
17 the standard instruction, if you think they need to be told
18 that their memory of the witnesses --

19 THE COURT: Sure.

20 MR. MAC MAHON: With Merlin, they had a transcript in
21 front of them, and they didn't with anybody else, so that may
22 be the confusion.

23 THE COURT: That's why I need to explain to them
24 that, you know, we can't, we can't pick and choose which
25 witnesses.

1 You know, the more interesting question, I've never
2 had this come up because we can't get a transcript done that
3 quickly, if a jury wanted a transcript of the entire case, I
4 think there we would have difficulty in not giving it to them
5 if we had it prepared and ready to go.

6 Judge Bryan way, way back in the history of time
7 actually got reversed once for telling a jury just
8 spontaneously, "Don't ask for transcripts. You can't have
9 them." So I'm always a bit, I'm a bit more subtle in how I
10 answer that question, all right? So that's what I'll do.

11 Since we haven't seen them today and we could then
12 find out when they plan to do their lunch and their mid-morning
13 break, I think we'll have them come in, all right? So you-all
14 have a seat for a second. Mr. Wood will bring the jury in.

15 All right, let's bring the jury in.

16 (Jury present.)

17 THE COURT: Is it cold in the jury room? I see some
18 of you have jackets on. Is it all right?

19 A JUROR: It's okay.

20 THE COURT: It's okay? Good.

21 Well, good morning, ladies and gentlemen. Again,
22 thank you for being here so promptly this morning, and I
23 thought I'd bring you in to answer your question because you
24 sent one to us, and the question is, "Is the jury allowed to
25 obtain a copy of the recorded/reported testimony of a witness.

1 If so, we would like the transcript of Robert S. and Merlin."

2 And the answer to that question is I'm unable to give
3 you transcripts, and the reason -- there are a couple of
4 reasons. One is obviously, we don't have a transcript of the
5 entire trial yet. It would take quite a while to do that. It
6 is true that we do have a transcript of Merlin's testimony
7 because his deposition was taken at an earlier time, but the
8 law does not permit me to highlight specific evidence.

9 You have to consider all the evidence in the case, so
10 if I gave you the transcript of just one or two witnesses,
11 you'd be unduly focusing on just that evidence, whereas you
12 have to look at all of the evidence. And again, it is your
13 collective memories of the evidence that must govern your
14 decision making.

15 So I hope that that answers your question, all right?

16 So while you're here, I had a question for you-all.
17 We were just curious as to what time, if at all, you plan to
18 take a mid-morning break so I can let these lawyers leave the
19 floor. Had you thought about that yet? If not, I don't want
20 to hear about your deliberations. If you could let us know.

21 And also, you don't have to take an hour lunch break
22 if you're comfortable eating in less time. I don't allow food
23 in the jury room, though, so you can't plan to eat while you're
24 working, but if you could just give us a note as to your plans
25 for your morning break and your, and your lunch break, we would

1 appreciate that, all right? Thank you.

2 All right, the jury may return. We'll await their
3 verdict.

4 (Jury out.)

5 THE COURT: And just for the record again, was there
6 any objection to that supplementary instruction to the jury?

7 MR. TRUMP: No, Your Honor.

8 THE COURT: From the defense?

9 MR. MAC MAHON: No, Your Honor.

10 THE COURT: All right, fine.

11 All right, so we'll give you -- as soon as we know
12 what their schedule is, we'll get -- if you can wait outside or
13 wait in the courtroom, whatever you want to do, all right?
14 Thank you.

15 MR. MAC MAHON: Thank you, Your Honor.

16 MR. TRUMP: Thank you.

17 (Recess from 10:07 a.m., until 1:28 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (Defendant present, Jury out.)

3 THE COURT: All right, we have another very
4 articulate -- and just for the record, counsel, I have
5 Mr. Trump and Mr. Olshan, Mr. Pollack, Mr. MacMahon. I'm
6 sorry, third counsel?

7 MS. HAESSLY: Ms. Haessly.

8 THE COURT: Yes, ma'am.

9 And the defendant, Mr. Sterling, they're all here in
10 court.

11 All right, the next question from this obviously very
12 careful jury is, "Count 4 uses the phrase 'directly and
13 indirectly.' Can you elaborate on the difference between these
14 terms. In addition, are both direct and indirect
15 communications required."

16 Well, the last sentence is the easy one, of course,
17 because of the way the law works. They're not both required,
18 and "and" meaning really "or." Either direct or indirect.

19 Does anybody disagree with that?

20 MR. POLLACK: Your Honor, in this case, I think that
21 there has to be direct communication because that's the only --
22 the government's only theory was that he directly communicated
23 with Risen. My concern here is if the jury is looking at if
24 Mr. Sterling told somebody on the Hill, somebody at SSCI, and
25 then that person turned around and told Mr. Risen, that would

1 be indirectly getting to Mr. Risen, but, of course, that would
2 not be a basis to convict.

3 The entire theory was that he directly communicated.
4 So I think the jury needs to be told both that there has to be
5 direct communication and that if Mr. Sterling told someone,
6 gave the information to someone lawfully entitled to receive it
7 and that person in turn gave it to Mr. Risen, that that is not
8 a basis to find Mr. Sterling guilty.

9 THE COURT: All right, let me hear if the government
10 agrees with that at least as to the second sentence.

11 MR. TRUMP: I think you should instruct them, Judge,
12 that what they're reading from on page 25 is a summary of the
13 offenses as charged but that the elements of the offense that
14 they must find, and they must find each and every element, is
15 on page 30, and that for Count 4, they must find that the
16 defendant willfully communicated, delivered, transmitted, or
17 caused to be communicated, delivered, or transmitted national
18 defense information. That's the element of the offense.

19 I don't think the Court should be opining on the
20 evidence or giving them illustrations of evidence. Just refer
21 them to the elements of the offense rather than page 25,
22 because there, if a defendant with intent to communicate
23 something to Mr. Risen did so, that's indirect. Direct would
24 be face to face.

25 But that's not what they're looking at. They're

1 looking at the way it was charged, and I think the Court should
2 simply refer them to page 30, the elements of the offense, and
3 instruct them that as to Count 4, as with every count, you must
4 find each and every element, and those elements are listed on
5 page 30.

6 The words "direct and indirect" do not appear in the
7 statute.

8 THE COURT: I understand that. I went back and just
9 looked at the book, but they do appear in the indictment. You
10 charged it that way.

11 MR. TRUMP: Correct.

12 THE COURT: And I don't know why you -- in the
13 future, it would make life a little bit easier, don't add
14 language that's not needed.

15 MR. TRUMP: Well, Judge, what's on page 25 is not a
16 complete statement of what's in the indictment.

17 THE COURT: No, I know that.

18 MR. TRUMP: The indictment includes all the necessary
19 elements, which would include intent as well. You can intend
20 to do something indirectly.

21 But I think the response to their question should
22 simply be that the nature of the offense charged, Counts 1, 4,
23 and 6, is the description of how the offense was charged by the
24 government. The elements of the offense are on page 30, and
25 you must find each and every element of the offense beyond a

1 reasonable doubt as I've enumerated in these instructions.

2 THE COURT: I think to make it easier for them, I
3 should just -- I'll say that but also say that whether
4 something was done directly or indirectly is not an element of
5 the offense.

6 MR. POLLACK: Your Honor, there is no evidence or
7 theory under which it could have been done indirectly. The
8 government did not, for example, put on evidence that
9 Mr. Sterling told SSCI because he knew SSCI would then turn
10 around and tell Mr. Risen. There is no theory under which he
11 indirectly in a way that would be unlawful told Mr. Risen.

12 I think the jury needs to be told --

13 THE COURT: All right.

14 MR. POLLACK: -- in order to respond to this question
15 that the government's theory is that it was direct
16 communication and that he -- if they find that all of the
17 elements are met and there was direct communication, that is
18 sufficient, and conversely, if they find that he communicated
19 only with people who were lawfully entitled to receive the
20 information, then they must find him not guilty.

21 There just isn't evidence to support a theory of
22 indirect communication.

23 THE COURT: I really want to help this jury because
24 they're working hard, and help them get through some fairly
25 dense law, so a simple example of direct communication is I

1 speak directly to you, right? Or I give you directly a letter
2 or I send an e-mail directly to you. That's an example of
3 direct communication, correct?

4 MR. POLLACK: Certainly.

5 THE COURT: You wouldn't disagree with that?

6 MR. POLLACK: That's -- I don't disagree with that.

7 THE COURT: All right. So I can tell the jury what
8 the law means -- what we mean by direct communication is that
9 kind of an example, all right? And only direct communication
10 is involved in Count 4.

11 Would the defense be comfortable with that?

12 MR. POLLACK: Yeah, I think that responds to their
13 question.

14 THE COURT: That answers their question because
15 basically I'm telling them you don't have to worry about
16 indirect.

17 And I think, I think you're correct, I don't recall
18 any evidence or argument that there was indirect communication.

19 MR. POLLACK: No, I think what the Court just said in
20 combination with what Mr. Trump suggested would do it.

21 THE COURT: And then tell them that the elements for
22 these offenses are in paragraph -- on page 30.

23 MR. TRUMP: One moment?

24 MR. POLLACK: I believe that -- Mr. MacMahon is
25 asking, I guess, for clarification on the first point. You

1 would tell them what is alleged here is direct communication,
2 then give your example of direct communication.

3 THE COURT: I would say the communication at issue in
4 Count 4 is only direct communication. An example of direct
5 communication would be I'm speaking directly to you. I send an
6 e-mail directly to you.

7 MR. POLLACK: Okay.

8 THE COURT: That's what's at issue in this case, and
9 refer them back to page 30.

10 I'm going to have this written out. Before I have
11 the jury come in, I'm going to read you exactly what I'm going
12 to say. And then remind them the elements of the offense are
13 spelled out explicitly on page 30.

14 MR. POLLACK: Okay. Thank you.

15 THE COURT: All right? Let me hear if there's
16 anything else the government wants me to add.

17 MR. OLSHAN: One moment, Your Honor?

18 THE COURT: Yes.

19 MR. TRUMP: I think as long as your instruction is
20 specific to Count 4, we're fine with that, but there could be
21 the possibility of confusion if it were not specific, for
22 example, Counts 1 and 2.

23 THE COURT: They have not asked about Counts 1 and 2.
24 They've asked about Count 4.

25 MR. TRUMP: As long as the instruction going -- the

1 clarification going back is directed to Count 4, we're --

2 THE COURT: That's how I'm going to phrase it. I'm
3 going to -- we're going to write it up, so before I give it to
4 the jury, I'll have run it by you again, and you'll have a copy
5 for your records, all right?

6 All right, hold on a second.

7 All right, so what I'm going to say is the
8 communication at issue in Count 4 is only direct communication.
9 An example of direct communication is if I say something face
10 to face, directly to somebody, all right? Or I e-mail a
11 message directly to you or I send a letter directly to you, all
12 right? That's an example of direct communication.

13 And then say that I want to remind you that the
14 elements for Count 4 are spelled out on page 30 of your
15 instructions, all right? Yes?

16 All right, I will write this up a little bit more
17 formal than that, all right? So we'll be right back.

18 All right, recess court.

19 (Recess from 1:38 p.m., until 1:50 p.m.)

20 (Defendant present, Jury out.)

21 THE COURT: All right, we've given you our proposed
22 written instruction. Any problems with it, anybody?

23 MR. TRUMP: No, Your Honor.

24 THE COURT: Mr. Pollack?

25 MR. POLLACK: Your Honor, I think that the

1 instruction is correct. I think to avoid confusion on their
2 part, they should be told specifically that there is not
3 evidence of indirect communication.

4 THE COURT: No, no, I'm not going to -- we don't
5 comment on the evidence. But all right, so this is what we
6 said in court.

7 MR. POLLACK: All right, I certainly understand the
8 Court's ruling.

9 THE COURT: All right, let's bring the jury in,
10 Mr. Wood.

11 (Jury present.)

12 THE COURT: It hasn't started snowing yet. I saw you
13 looking out the window. It's all right.

14 All right, ladies and gentlemen, you asked this
15 following question: "Count 4 uses the phrase 'directly and
16 indirectly.' Can you elaborate on the difference between these
17 terms. In addition, are both direct and indirect
18 communications required."

19 The only type of communication at issue in Count 4 is
20 direct communication. Examples of direct communication would
21 include if I say something to someone face to face or send a
22 letter to that person or an e-mail to someone. Direct
23 communication is not a specific element of Count 4, and
24 therefore, you should carefully review the elements of Count 4
25 on page 30 of your instructions.

1 I hope that answers your question. Again, we'll give
2 you a written copy of this, all right?

3 And I understand you're planning to leave at 4:30
4 today. Again, about 4:27, we'll bring you in here just so I
5 can say good night to you because it is the long weekend,
6 two-day weekend we have ahead of us.

7 And again, because the weather is a little funny
8 right now, you-all have Ms. Guyton's phone number, so if there
9 should be issues Monday morning, you know, she'll be your
10 contact person.

11 Should the federal government be closed, you have the
12 day off. If the federal government is open late, then,
13 frankly, I think we should sort of set a default option, all
14 right, and let's say 11:00 start time? That should get the
15 roads reasonably clear and/or give you enough time to call if
16 we have problems, all right? So that's how we'll proceed on
17 Monday, all right?

18 All right, we'll let you go back, and we'll have a
19 couple of copies of this instruction for you.

20 (Recess from 1:53 p.m., until 3:42 p.m.)

21 (Defendant present, Jury out.)

22 THE COURT: All right, as long as I have one counsel
23 per side, that's all that we need, so, Mr. Olshan, you're on
24 the board.

25 Okay. The first question they have is, "May we have

1 another copy of the jury instructions. We only have three
2 copies."

3 We've made them two more full sets, with the two
4 supplementals that we added, okay? So I assume there's no
5 objection to that?

6 MR. OLSHAN: No.

7 MR. MAC MAHON: No, Your Honor.

8 THE COURT: All right, that's fine.

9 And the second note from the jury: "If there is no
10 government delay or closing on Monday, we will be starting at
11 10 a.m.," all right?

12 So Monday morning is ten unless there's a government
13 problem, all right? And we'll face that when we come to it.

14 All right, now, the substantive question: "Count 3
15 states that the document was in his residence. The elements do
16 not use the term 'residence.' Do the words in the count take
17 precedence over the words in the elements."

18 The answer is it's the words in the elements. Any
19 dispute about that?

20 MR. OLSHAN: No, Your Honor. I think it would just
21 be useful for the Court to remind them, as with the question
22 about the other count, that the count instructions are
23 summaries of the allegations, and what should control their
24 decision making is the specific elements laid out in the
25 respective offense element instructions.

1 THE COURT: So you want me to tell them the counts --
2 the description of the counts are just a brief summary of the
3 specific charge, and what they must use in determining whether
4 or not the government has proven the charge beyond a reasonable
5 doubt are the specific elements contained in these
6 instructions.

7 MR. OLSHAN: Correct.

8 THE COURT: Is that comfortable -- does that sit well
9 with you? I want to give it to them quickly so that I don't
10 have to type it again.

11 MR. MAC MAHON: No, I'm sorry, Your Honor. I think
12 this is a problem with these nature of the offense
13 instructions, which describes the actual possession of the
14 letter at his residence here in Virginia. It's going to get us
15 back to the venue question as far as I can see.

16 I think what they need to be told is -- I agree with
17 what Mr. Olshan says is that the elements are not set forth in
18 these nature of the charge instructions, but that, but the
19 element to be guilty of this count, what it said has to have
20 unauthorized possession or control over a document relating to
21 the national defense of the United States.

22 It did say in the indictment that it was in his
23 residence in the Eastern District of Virginia, and that if
24 that's what they're asking is does it have to use the term
25 "residence," they still need to find that it was in his, in his

1 possession in the Eastern District of Virginia between January
2 31, '02, and '03.

3 So I don't know if they're confused about the term
4 "residence" or about anything else, but that is part of the
5 offense that has to be charged. So I think just telling them
6 that they should look at the elements is not the whole answer
7 to their question, is what are they also meaning by in the
8 relevance, because, of course, the relevance of the residence
9 in the, in the nature of the charge instruction is because of
10 the venue issue, he had to possess it here in the Eastern
11 District of Virginia, and so that issue is right in front of
12 them, and I think they should be told that they have to find
13 that it was, you know, that letter was possessed in the Eastern
14 District.

15 THE COURT: Mr. Olshan?

16 MR. OLSHAN: Your Honor, as I recall, there were two
17 options before the jury was instructed. One was to just give
18 them a copy of the indictment versus summaries of each of the
19 offenses. Obviously, if the Court had given the jury the
20 actual indictment, it would have contained all the factual
21 allegations in the indictment, not just what has been
22 summarized for purposes of these summary of the offense
23 instructions. So this issue would have come up either way, but
24 what controls the jury's decision is what the actual elements
25 of the offenses are, not all of the specific factual

1 allegations.

2 So I agree with Mr. MacMahon that they must conclude
3 that there was unlawful retention of this document in the
4 Eastern District of Virginia, but I believe by pointing them
5 back to the elements, that's sufficient.

6 MR. MAC MAHON: And I'll just rest, Your Honor. The
7 elements --

8 THE COURT: Wait, wait, wait, wait, wait. I'm
9 writing. Hold on one second.

10 MR. MAC MAHON: Thank you.

11 THE COURT: All right, how about this: It is not an
12 element of Count 3 that the document was in defendant's
13 residence. To find the defendant guilty of Count 3, you must
14 be satisfied beyond a reasonable doubt that the government has
15 proven the two elements described on page 41 and proven venue
16 in the Eastern District of Virginia by a preponderance of the
17 evidence. See Instruction 56.

18 Is the government satisfied with that?

19 MR. OLSHAN: Yes, Your Honor.

20 THE COURT: Mr. MacMahon?

21 MR. MAC MAHON: Your Honor, my only suggestion would
22 be as to the document, it is the letter itself, if the Court
23 wants to clarify that.

24 THE COURT: Should I say "the letter"? Does
25 everybody agree that's what they're talking about? They use

1 the word "document." Count 3 states that the document was in
2 his residence, and that refers to the letter.

3 MR. OLSHAN: That's fine, Your Honor.

4 THE COURT: All right. So, all right, I'm going to
5 really go over this one more time: It is not an element of
6 Count 3 that the letter -- shall I say "the letter at issue" so
7 there's no question about it?

8 MR. MAC MAHON: That's fine.

9 THE COURT: The letter at issue was in defendant's
10 residence. To find the defendant guilty of Count 3, you must
11 be satisfied beyond a reasonable doubt that the government has
12 proven the two elements described on page 41 and proven venue
13 in the Eastern District of Virginia by a preponderance of the
14 evidence as explained in the instruction on page 56.

15 All right? We're going to type that up and get it to
16 the jury. Yes?

17 MR. OLSHAN: That's fine.

18 THE COURT: Any objection from defense?

19 MR. MAC MAHON: Your Honor, I know you haven't given
20 us this before, but I'll just say it for the record: I think
21 that the venue can only be by retaining the document itself in
22 the Eastern District on this count and that when you say
23 "venue," I think that the issue of retention again is coming to
24 the fore. There's no proper venue to be found in the Eastern
25 District unless they find that that document was retained here,

1 but that may be beyond the scope of the question.

2 In fact, the instruction says it was willfully
3 retained, the same document. As Mr. Pollack points out, it's
4 on page 41, Your Honor.

5 THE COURT: But the offense -- would not the offense
6 also occur in any district where it was failed to be delivered?
7 In other words, if I retained a document in Maryland which
8 should have been returned to the CIA in Virginia, is the, is
9 the offense, is the offense --

10 MR. MAC MAHON: Judge, I don't think so. I don't
11 think there's any evidence of a request whatsoever in this
12 case.

13 THE COURT: All right.

14 MR. MAC MAHON: The one, the one time that the, we
15 heard testimony of anyone talking about documents was in New
16 York, when he was read out anyway.

17 THE COURT: Well, no, you also have the debrief.

18 MR. MAC MAHON: That was in New York, Your Honor.

19 THE COURT: The debriefing was in New York?

20 MR. OLSHAN: The debriefing was at the CIA, and the
21 date that's alleged in Count 3 is the date that he left that
22 agency, which is January 31, 2002. Ms. Scherlis asked him if
23 he had any additional -- any classified documents, and he said
24 no.

25 THE COURT: But where did that occur?

1 MR. OLSHAN: In Langley.

2 THE COURT: In headquarters. That's what I thought.

3 MR. OLSHAN: He had returned to headquarters after he
4 left New York in August 2000.

5 MR. MAC MAHON: He'd still have to retain the
6 document. They still have to find that he retained the
7 document. If he hadn't retained it, he couldn't have failed to
8 deliver it even if the jury construed her request as applying
9 to --

10 THE COURT: All right. It is not an element of Count
11 3 that the letter at issue was in defendant's residence. The
12 issue is did he willfully retain the document in the Eastern
13 District of Virginia.

14 MR. MAC MAHON: That's fine, Your Honor.

15 THE COURT: Right?

16 MR. OLSHAN: One moment, Your Honor.

17 THE COURT: Yeah, I'm going back to square one on
18 this one.

19 All right, here's what I'm going to give them: It is
20 not an element of Count 3 that the defendant willfully retained
21 the letter in his residence. To find the defendant guilty of
22 Count 3, you must be satisfied that the government has proven
23 the two elements explained on page 41 beyond a reasonable doubt
24 and that the willful retention occurred in the Eastern District
25 of Virginia by a preponderance of the evidence.

1 MR. OLSHAN: That's fine, Your Honor.

2 THE COURT: All right? Last call to the defense, any
3 objection?

4 MR. MAC MAHON: Yes, Your Honor, that's fine.

5 THE COURT: All right.

6 MR. MAC MAHON: There are, there are actually two --
7 that's fine, Your Honor.

8 THE COURT: All right, that's what we're going to
9 type up. Again, you'll have it before we give it to the jury.
10 We'll recess court.

11 (Recess from 3:58 p.m., until 4:07 p.m.)

12 (Defendant and Jury present.)

13 THE COURT: All right, ladies and gentlemen, I'm
14 going to give you another supplemental instruction. I'll just
15 read it to you now, and it will be 41(a) if you're putting it
16 in your packets.

17 It is not -- I'm sorry, the question that you asked
18 was, "Count 3 states that the document was in his residence.
19 The elements do not use the term 'residence.' Do the words in
20 the count take precedence over the words in the elements."

21 Well, the words in the elements always take
22 precedence, but let me go over this more specifically with you:
23 It is not an element of Count 3 that the defendant willfully
24 retained the letter at issue in his residence. To find the
25 defendant guilty of Count 3, you must be satisfied that the

1 government has proven the two elements explained on page 41 of
2 the instructions beyond a reasonable doubt and that the willful
3 retention occurred in the Eastern District of Virginia by a
4 preponderance of the evidence.

5 Because that's the venue issue that I explained to
6 you, and I think that may be Instruction 56.

7 All right, I hope that explains it. You've now got
8 five sets of instructions, right? So we'll give you five of
9 these packages so you can keep your packets together.

10 Any objection from counsel?

11 MR. OLSHAN: No, Your Honor.

12 MR. MAC MAHON: No, Your Honor. Thank you.

13 THE COURT: All right, thank you, ladies and
14 gentlemen. We'll send you back to continue your deliberations.

15 (Recess from 4:07 p.m., until 4:29 p.m.)

16 (Defendant and Jury present.)

17 THE COURT: Well, it's 4:30, and you-all told us you
18 wanted to stop, so I again want to just send you off for the
19 weekend and again hope that you have a restful weekend. Please
20 remember, no work on the case whatsoever. No communications
21 with anybody.

22 I know one of you became a carpooler with one of the
23 alternate jurors. Make sure you don't have any contact with
24 her.

25 And again, just continue doing what you're doing, and

1 we'll see you hopefully at 10:00 Monday morning so there are no
2 weather issues, all right?

3 Again, we're going to leave the evidence in the room
4 other than the three exhibits that have to be specially locked
5 up. Otherwise, everything will stay as you've left it, all
6 right? If there's nothing further, we'll recess.

7 And then, counsel, you don't need to be back here
8 until 10:00 Monday.

9 Oh, I did want to warn you there is one thing. I'm
10 starting another jury trial Monday morning. I'm going to use a
11 different jury room for that jury, but because I am going to
12 have some matters going on in here, there may be a little bit
13 more of a delay in getting back to you-all with questions. And
14 that trial is going to start at 10:00 in this courtroom.

15 So, counsel, you should know that, too, all right?
16 We'll recess court for the day. Thank you.

17 (Recess from 4:31 p.m., until 10:00 a.m., January 26, 2015.)
18

19 CERTIFICATE OF THE REPORTER

20 I certify that the foregoing is a correct transcript of
21 the record of proceedings in the above-entitled matter.
22

23

24

25

/s/
Anneliese J. Thomson